IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. JOHN EDWARD FENLEY, Petitioner.	)	2 CA-CR 2006-0316-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR 97-281

Honorable Peter J. DeNinno, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

John Edward Fenley — Tucson
In Propria Persona

H O W A R D, Presiding Judge.

¶1 In May 2002, petitioner John Fenley was sentenced to a presumptive, five-year prison term for sexual abuse in CR 97-281 and a consecutive, presumptive term of 2.5 years for aggravated driving under the influence of an intoxicant (DUI) in CR 98-808, after the trial court revoked his probation in those cases as well as in CR 98-807. The court terminated Fenley's probation as unsuccessful in the last case. Fenley appealed, and

counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Fenley filed a pro se supplemental brief. In Fenley's post-conviction proceedings, his counsel filed a petition avowing there were no meritorious issues to raise under Rule 32, Ariz. R. Crim. P., 17 A.R.S., and the trial court permitted Fenley to file a supplemental petition. After the trial court denied relief, Fenley filed a sixty-seven-page petition for review. Consolidating the petition with the appeal, this court affirmed the revocation of probation and denied relief. *State v. Fenley*, Nos. 2 CA-CR 2002-0313, 2 CA-CR 2003-0035-PR (consolidated) (memorandum decision filed Feb. 25, 2005). Fenley's petition for review to the supreme court was denied. In the petition for review now before us, Fenley challenges the trial court's order denying post-conviction relief on claims Fenley raised in a March 2006 petition and a subsequent supplement.

¶2 In our previous decision, we reviewed the "convoluted" history of these cases, including CR-98-033, which Fenley has included in this petition for review but which we expressly noted was not before us because the petition to revoke probation in that case had been dismissed. We identified the numerous claims Fenley had raised on appeal and in his first post-conviction proceeding, finding some precluded and others lacking in merit. In this, Fenley's most recent post-conviction proceeding, Fenley raises, for the most part, claims he raised on appeal or in the first post-conviction proceeding; at the very least, to the extent the claims are at all different, the claims could have been raised in the prior proceedings. Fenley

contends, inter alia, that he was falsely arrested or arrested without probable cause in CR 97-281; there was no valid complaint because of the lack of probable cause and the justice court consequently lacked personal and subject matter jurisdiction; because no complaint was "in superior court," that court lacked subject matter or personal jurisdiction as well; the information was insufficient, and, again, the court consequently lacked jurisdiction; the conviction in CR 97-281 was "obtained by prosecutorial misconduct"; the "commissioner[']s court in CR 97-281 [was] void of personal, subject matter, prosecutorial (authority) and judicial jurisdiction"; he was falsely imprisoned in that same cause and the judgment of conviction was therefore void; trial counsel was ineffective; the complaint in CR 97-281was the result of perjury; the complaint was duplicitous; the complaint and information were void because they omitted information; and the conviction is unsupported. He also contends this court did not address all issues on appeal. In addition, Fenley claims this court never reviewed the transcript of the change-of-plea hearing in CR 97-281, that our order to the court reporter was returned to us,[1] and that no transcript of that proceeding was produced until the trial court reordered it in this post-conviction proceeding. On review, Fenley essentially reiterates the claims he raised below.

[1]Our records show a copy of our October 28, 2003 order to the court reporter regarding preparation of this transcript was returned to us as undeliverable. This is undoubtedly the reason this transcript was not prepared. In this proceeding, the trial court referred to a letter from the clerk of the trial court to the court reporter, explaining the circumstances that resulted in the court reporter's failure to prepare the transcript. But that letter is not in the record before us.

¶3 The trial court identified the claims raised, finding some waived or untimely and, consequently precluded, *see* Rule 32.2, and others without merit, after addressing the substance of those claims. No purpose would be served by "rehashing the trial court's correct ruling." *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Having reviewed that ruling; the record before us, which includes additional orders the trial court entered in this proceeding that reflect its thorough investigation into and careful consideration of Fenley's many claims; and, finally, Fenley's petition for review, we conclude Fenley has not established the court abused its discretion in denying the relief Fenley requested in his second petition for post-conviction relief. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990) (appellate court reviews trial court's decision on petition for post-conviction relief for abuse of discretion). We therefore adopt the trial court's order. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. We note, in particular, that the appeal and the first post-conviction proceeding followed the revocation of probation, not the judgments of conviction that resulted in the imposition of probation. Therefore, we question whether it was even necessary for the trial court to review the transcript of the September 17, 1997 change-of-plea hearing. In any event, even assuming Fenley's argument calls into question whether the trial court had authority to place him on probation in the first instance and that his claim is jurisdictional in nature, the trial court reviewed that transcript, permitted Fenley to supplement his petition, and rejected Fenley's claim that no facts

support his plea of no contest. So, too, have we. Fenley's claim that the trial court erroneously denied relief on this ground, like the others, is not meritorious.

¶4 We grant Fenley's petition for review, but we deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

GARYE L. VÁSQUEZ, Judge